IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 271 OF 2002.

1. Smt. Sebastiana Coutinho,
   housewife, through
   Attorney Holder.
2. Shri Jose Piedade Coutinho,
   both r/of H.No. 955,
   Chiraknali, Kakoda,
   Curchorem-Goa. ... Petitioners.

Versus

Shri Florencio Pereira,
r/o Opp. Curchorem Police
Station, Curchorem-Goa. ... Respondent.

Mr. F.N. Tavora, Advocate for the Petitioners.

Mr. M.S. Sonak, Advocate for the Respondent.

Coram: P.V. HARDAS, J.

Date: 25th October 2002.

ORAL JUDGMENT.

By consent of the parties this Writ Petition is taken up for final hearing at the stage of admission. Rule. Rule heard forthwith.

2. This petition challenges the Order passed by the IInd Additional District Judge, South Goa, Margao, dated 30th April 2002, in Miscellaneous Civil Appeal No. 42 of 2002, confirming the Order passed by the Civil Judge, Junior Division, Quepem, dated 21st March 2002, in Regular Civil Suit No. 18/2002/B, granting temporary injunction to the respondent/plaintiff in terms of prayer "a" part.

3. By the Order of the learned Civil Judge, Junior Division, Quepem, the present petitioners were restrained from destroying the plantation done in the bharad land under Survey No. 203/5 and were further restrained from plucking the fruit bearing trees and to maintain status quo till the disposal of the application under Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act, which is said to be pending before the Mamlatdar. The petitioners were also restrained from interfering in the suit land under Survey No. 205/5. This Order of the learned trial Judge arose in the suit filed by the respondent/plaintiff, claiming to be the owner of the property surveyed under Survey No. 205/5, 205/2, 205/4 and 203/5. The respondent/plaintiff had claimed to be in possession of the property surveyed under Survey No. 205/5. The property under Survey No. 205/4 is a paddy field and is cultivated by the petitioners/defendants. The property surveyed under Survey No. 203/5 is partly a paddy field, which is cultivated by the petitioners/defendants, and partly a bharad land having coconut and banana plantation, mango trees, cotton trees, tamarind trees, teak trees, etc.. The respondent/plaintiff had claimed that he is in possession of the said bharad land admeasuring 3,225 sq. mts. from out of Survey No. 203/5. Thus, the property under Survey No. 205/5 and the bharad land under Survey No. 203/5 were the subject matter of the dispute in the

suit. It would be useful to make a reference to the fact that the petitioners/defendants had filed an application before the Joint Mamlatdar claiming to be tenants of the property under Survey Nos. 203/5 and 205/4 and had sought the relief of injunction against the respondent/plaintiff and his brother in respect of the aforesaid Survey numbers. After hearing the parties, the Joint Mamlatdar had granted injunction only in respect of the paddy portion under Survey No. 205/4. The relief in respect of uncultivated part under Survey No. 203/5 was rejected. The appeal preferred by the petitioners/defendants against the said Order was dismissed by the Deputy Collector. The Deputy Collector, however, directed the parties to maintain status quo till the disposal of the application under Section 7 of the Goa, Daman and Diu Agricultural Tenancy Act.

4. The learned trial Court, after appreciating the documents filed by the parties, held that Form III in respect of Survey No. 203/5 showed that the name of the father of the plaintiff was recorded in the occupant column whereas the name of the late husband of the petitioner no. 1 was recorded as the tenant only in respect of the paddy field. The learned trial Judge further held that Form I & XIV also showed that the land admeasuring 2,375 sq. mts. is under paddy cultivation

whereas the land admeasuring 3,225 sq. mts. is uncultivable land. The learned trial Judge, therefore, came to the conclusion that the petitioners/defendants had failed to adduce any evidence to prove that they were in possession of the bharad portion of the land under Survey No. 203/5. In respect of ouster of jurisdiction, the learned trial Judge held that the jurisdiction of the Civil Court was not ousted since there was no evidence on record to prove that the petitioners/defendants were the tenants of the bharad land. On these considerations, therefore, the learned trial Court passed the necessary order of temporary injunction in favour of the respondent/plaintiff.

5. The petitioners/defendants, being aggrieved by the Order of the learned trial Court, filed Miscellaneous Civil Appeal No. 42 of 2002 before the IInd Additional District Judge, South Goa, Margao, who, by Order dated 30th April 2002, dismissed the Appeal and maintained the Order passed by the learned trial Court. The learned lower appellate Court had also recorded a finding that Form I & XIV indicates that portion of land admeasuring 2,375 sq. mts. is a paddy field and the portion of land admeasuring 3,225 sq. mts. is uncultivable land, i.e., bharad land. The learned lower appellate Court found that Form III showed that the name of the petitioner/defendant was recorded in the tenants

column only in respect of the paddy portion. The learned lower appellate Court, therefore, held that in the absence of a challenge on behalf of the petitioners/defendants the entry in Form III and XIV prima facie prove that the petitioners/defendants are in possession of only the paddy portion. The learned lower appellate Court in paragraph 16 of the Judgment has also adverted to the Order passed by the learned Mamlatdar holding that the petitioners/defendants had failed to prove that they were in possession of the bharad land. The learned lower appellate Court in paragraph 17, therefore, came to the conclusion that there was absolutely no material to prima facie indicate that the petitioners/defendants were the tenants of the bharad portion of the land and, therefore, confirmed the Order of the learned trial Court. The learned lower appellate Court also held that the jurisdiction of the civil Court was not ousted to grant an injunction in respect of the bharad portion of the land as there was no evidence to indicate that the petitioners/defendants were the tenants of the bharad portion of the land and, secondly, relying on the Judgment in **Krishna V. Morajkar v. Vishnu Kashiram Haldankar,** 1996 (2) Goa L.T. 309, wherein it has been held that:-

> "...What is required under Order 39 C.P.C. is only a prima facie case, which means, physical possession on the date of the suit, which, if found proved, would necessarily lead to

> conclusion that the balance of convenience lies in favour of the plaintiff. The question of tenancy has neither to be dealt with nor arises while dealing with the question of temporary injunction and its proper place is at trial on merits."

6. I have heard the learned counsel for the parties. Mr. Tavora, the learned counsel appearing for the petitioners, has urged before me that, in view of the plea of tenancy and particularly in view of the pendency of the matter before the Mamlatdar, the civil Court had no jurisdiction to decide a prayer for temporary injunction. Secondly, it is urged before me that the survey records have a presumptive value and the presumptive value could not be replaced by mere filing of affidavits. Mr. Sonak, the learned counsel appearing on behalf of the respondent/plaintiff, has urged before me that the survey records make a distinction between the cultivable area and the non-cultivable area. He has also urged that the Mamlatdar has granted relief to the petitioners/defendants in respect of the cultivable portion only. An appeal against the Order of the Mamlatdar filed at the instance of the petitioners/defendants was dismissed by the Deputy Collector. Mr. Sonak has also urged that the two Courts below have concurrently recorded a finding of fact, which cannot be assailed in writ jurisdiction.

7. With the assistance of the learned counsel for

the parties I have perused the Orders of the two Courts below. The plea of jurisdiction was raised before the learned lower appellate Court and the learned lower appellate Court relying on the Judgment of a learned Single Judge of this Court in Krishna V. Morajkar v. Vishnu Kashiram Haldankar (Supra) has held that the jurisdiction of the civil Court is not ousted. The plea regarding the documents having presumptive value was also advanced before the learned trial Court. Mr. Tavora has cited certain decisions on this aspect. There is absolutely no quarrel with the proposition that the presumption is regarding correctness of the entry in the Record of Rights. However, in this particular case it is seen that the survey records particularly Form III & XIV showed that the petitioners/defendants are not in possession of the bharad portion of the land but are tenants in respect of the cultivable portion of the land. This point has been specifically urged before the learned lower appellate Court and has been answered by the learned lower appellate Court. Two Courts below have concurrently recorded a finding in favour of the respondent/plaintiff and the finding of fact recorded by the two Courts below cannot be faulted. Thus, in my considered opinion, the reasoning of the two Courts below, being well founded and based on documents, does not warrant any interference in the writ jurisdiction. There is, thus, no substance in the present Writ

Petition and the same deserves to be dismissed.

8. In the result, therefore, the Writ Petition is dismissed with no order as to costs. Rule stands discharged.

(P.V. HARDAS)
JUDGE.

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